

2 FAM 230

IMMUNITIES AND LIABILITIES OF FOREIGN REPRESENTATIVES IN THE UNITED STATES

2 FAM 231 GENERAL

2 FAM 231.1 Scope

(TL:GEN-268; 02-28-1991)

This subchapter sets forth Department of State policy and procedures regarding the immunities and liabilities of foreign representatives in the United States.

2 FAM 231.2 Responsibilities

(TL:GEN-268; 02-28-1991)

The Office of the Chief of Protocol (S/CPR) administers this program, in consultation and coordination with other Department units as specified in the sections below.

2 FAM 231.3 Authorities

(TL:GEN-268; 02-28-1991)

- a. Crime of Violence Defined, 18 U.S.C. 16.
- b. Diplomatic Relations Act, 22 U.S.C. 254a et seq. (1978).
- c. State Department Basic Authorities Act (1956), as amended by 22 U.S.C. 4301 et seq.
- d. U.S. Constitution, Article II, Section 3.
- e. Vienna Convention on Consular Relations, 21 U.S.T. 77, T.I.A.S. 6820.
- f. Vienna Convention on Diplomatic Relations, 23 U.S.T. 3227, T.I.A.S. 7502.

2 FAM 232 IMMUNITY OF FOREIGN DIPLOMATIC AND CONSULAR PERSONNEL

2 FAM 232.1 Embassy Personnel

2 FAM 232.1-1 Diplomatic Agents

(TL:GEN-268; 02-28-1991)

a. Diplomatic agents enjoy the highest degree of privileges and immunities. They enjoy complete personal inviolability, which means that they may not be arrested or detained; they are owed a special measure of respect and protection; and neither their property nor residences may be entered or searched. Diplomatic agents also enjoy complete immunity from the criminal jurisdiction of the host State and thus cannot be prosecuted absent a waiver no matter how serious the offense. Diplomatic agents, with certain exceptions, also have immunity from civil suit. Finally, they enjoy complete immunity from the obligation to provide evidence as witnesses and cannot be required to testify even, for example, when they have themselves been the victim of a crime.

b. Family members forming part of the household of diplomatic agents (recognized by the Department of State as such) enjoy the same privileges and immunities as do the sponsoring diplomatic agents.

2 FAM 232.1-2 Members of Administrative and Technical Staff

(TL:GEN-268; 02-28-1991)

a. Members of the administrative and technical staff of a diplomatic mission perform tasks critical to the inner workings of the mission. Accordingly, they enjoy privileges and immunities identical to those of diplomatic agents in respect of personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses. Their immunity from civil jurisdiction, however, is less extensive than that of diplomatic agents. Members of the administrative and technical staff enjoy immunity from civil jurisdiction only in connection with the performance of their official duties.

b. Like those of diplomatic agents, the recognized family members of administrative and technical staff enjoy the same privileges and immunities from the host country's criminal jurisdiction as their sponsors. Since these family members have no official duties to perform, they effectively enjoy no immunity from civil jurisdiction.

2 FAM 232.1-3 Members of Service Staff

(TL:GEN-268; 02-28-1991)

Members of the service staff of diplomatic missions perform basic support tasks for the missions and are therefore accorded much less in the way of privileges and immunities than are those in the other categories. Service staff members have only official acts immunity (see further explanation below) in connection with all aspects of host State jurisdiction, and they enjoy no personal inviolability or immunity from the obligation to provide evidence as witnesses. The families of service staff members enjoy no privileges or immunities.

2 FAM 232.1-4 Nationals or Permanent Residents of United States

(TL:GEN-268; 02-28-1991)

The general rules set forth above assume that the staff members of the diplomatic mission involved are nationals of the sending country or of some third country. Traditionally, governments are unwilling to surrender any jurisdiction over their own nationals, and the modern treaty regime states precise rules on this point. The United States, as a matter of policy, does not normally accept the accreditation of its own nationals or permanent residents as diplomatic agents but, were it to do so, such diplomatic agents would enjoy inviolability and jurisdictional immunity only in connection with the performance of official acts. The family members of diplomatic agents enjoy no privileges or immunities if they are U.S. nationals. Members of the administrative and technical staff, members of the service staff, and family members of these persons enjoy no privileges and immunities if they are nationals or permanent residents of the United States.

2 FAM 232.1-5 Special Bilateral Agreements

(TL:GEN-268; 02-28-1991)

The categories set forth above are inapplicable with respect to foreign countries with which the United States has concluded bilateral agreements which grant to other members of the staff of their respective embassies and consulates (provided that they are nationals of the sending country) the privileges and immunities to which only diplomatic agents are normally entitled.

2 FAM 232.2 Consular Personnel

(TL:GEN-268; 02-28-1991)

a. Rights and immunities of foreign consular personnel in the United States generally are derived from treaties between the United States and each country concerned. However, in actual practice, foreign consular representatives in the United States enjoy only immunity with respect to their official acts. Generally, consular officers are subject to process of local courts. They are entitled to show as a defense that the act, which is the subject matter of the suit, was performed in an official capacity.

b. Consular officers and employees may be called upon to give testimony in either a civil or criminal court case, provided such testimony does not entail producing documents from their archives or giving evidence relating to their official duties. United States authorities and courts requesting such testimony are enjoined to take all reasonable steps to avoid interference with the performance of a consul's official duties.

c. A consular officer or employee, who is not a national of the United States, who is not engaged in private occupation for gain, and who was not normally a resident of the United States at the time of appointment to the consulate ordinarily enjoys exemption from military, naval, air, police, administrative, or jury service of every kind.

2 FAM 232.3 Accreditation and Related Documentation

(TL:GEN-268; 02-28-1991)

a. S/CPR is the only office in the Department of State which is authorized to accept (except for the purposes of issuance or refusal of visas) foreign representatives to the United States who are entitled to immunity from U.S. jurisdiction. S/CPR issues an identification card to those entitled to criminal immunity. The card describes the category into which the individual falls and the extent of immunity to which he or she is entitled.

b. Before accepting any alien notified to it by the appropriate Government, S/CPR shall review records maintained under Sec. 2 FAM 234.3 and shall withhold acceptance and refuse to issue an identification card to an alien with respect to whom probable cause exists to believe that person committed a serious criminal offense, as defined in Sec. 2 FAM 234.3-2 paragraph a(1), in the United States, or that the person has previously left the United States because of such a finding.

c. S/CPR will require missions (except for those missions subject to a bilateral ceiling restricting the number of official employees at the mission) notifying new members of a mission to include in the notification either information on which current member is being replaced, including the date of the latter's departure, or certification that the person notified will fill a new position.

d. Persons serving in connection with international organizations are accredited to the international organization concerned, not to the United States. USUN issues appropriate identification cards to persons accredited to the United Nations; S/CPR issues identification cards to those accredited to other international organizations.

2 FAM 232.4 Waiver of Immunity

(TL:GEN-268; 02-28-1991)

a. Department of State general policy is to request a waiver of immunity from criminal jurisdiction in all criminal cases involving foreign personnel with such immunity, in order to permit the law of the United States to take its course in the investigation and prosecution of all aliens. Seek such waivers in consultation and coordination with L.

b. Exceptions to this general policy may be made where overriding foreign relations, national security, or humanitarian concerns justify such an exception, upon the approval of the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Political Affairs, or the Under Secretary of State for Management. Such humanitarian concerns could be presented, for example, where the continued presence in the United States of the person concerned would be dangerous or harmful, or when the life or health of the person concerned would be in danger.

2 FAM 233 CRIMINAL AND CIVIL LIABILITY OF FOREIGN REPRESENTATIVES

2 FAM 233.1 General Policy

(TL:GEN-268; 02-28-1991)

Department policy is to formulate a comprehensive program for enforcement of limitations on diplomatic immunities and to control the abuse of such immunities, in a manner that is both effective and consistent with international law.

2 FAM 233.2 Background

(TL:GEN-268; 02-28-1991)

a. Under international law and practice, persons extended immunity from the jurisdiction of a host country's laws nonetheless are obligated to respect those laws. Diplomatic immunity is based upon the principle that members of diplomatic, or comparable, missions have a need to pursue their official duties, free from harassment and possible intimidation and without impediment to their performance of those duties. Immunity is not a license for misconduct. It is in fact a doctrine intended to benefit the mission, not its individual members. Consequently, the U.S. Government in the first instance looks to chiefs of diplomatic missions, to their counterparts in missions to international organizations, and to the heads of international organizations headquartered or maintaining offices in this country, to educate members of their staffs, as well as family members who enjoy derivative immunity, on their duty to respect U.S. laws and regulations. The U.S. Government also expects all missions to consider in good faith all requests made for the waiver of immunity, and to take appropriate action against those who may abuse their immunity. In the end, the United States holds the chief of mission and the sending government responsible for the conduct of people sent to the United States as diplomatic representatives or other persons entitled to immunity.

b. The Department of State also recognizes that, by accepting foreign diplomats and others with immunity from local jurisdiction, the Department becomes responsible to United States law enforcement authorities and the public to protect against abuse of that immunity. Where abuse occurs, it is Department policy to take prompt and effective action, consistent with the international obligations of the United States, against the offender and, where appropriate, the offender's mission or government.

2 FAM 233.3 Criminal Violations

(TL:GEN-268; 02-28-1991)

a. Department policy with respect to alleged criminal violations by persons with immunity from criminal jurisdiction is:

(1) To encourage law enforcement authorities vigorously to pursue the investigations, to prepare cases carefully and completely, and to document properly each incident so that charges may be pursued as far as possible in the U.S. judicial system;

(2) To request the sending government or international organization in all cases to waive immunity so that all allegations may be fully adjudicated;

(3) In the absence of waiver (or exceptionally even with a waiver), in cases of serious offenses, as defined in 2 FAM 234.3-2 paragraph a(1), or of recurrent lesser offenses, to require the alleged offender to leave the United States, including, in the case of offenses by family members, to require departure of the mission member from whom the family member's immunity derives, as necessary;

(4) In all cases involving injury to other persons or damage to property, to support and assist efforts of the aggrieved to obtain prompt restitution from the individual offenders or their government; and

(5) To prevent the return to the United States of alleged offenders who have been required to leave this country unless they submit fully to the jurisdiction of the court of the United States with jurisdiction over the offense.

b. Each departure from this policy requires the written approval of the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Political Affairs, or the Under Secretary of State for Management.

2 FAM 233.4 Communication with Chiefs of Mission and Others

(TL:GEN-268; 02-28-1991)

Personnel of the Department of State who have responsibility as set forth below for the implementation and enforcement of the program described in Sec. 2 FAM 233.1 should be familiar with the information about the program which has been communicated to Chiefs of Diplomatic Missions in the United States (and comparable officers). The communication was by a circular Diplomatic Note of November 15, 1989, and the text of that note is 2 FAM 233 Exhibit 233.4 .

2 FAM 233.5 Cooperation with Law Enforcement Authorities

(TL:GEN-268; 02-28-1991)

a. To enhance the success of U.S. authorities in identifying alleged offenders and taking action consistent with due process principles, the Department will cooperate with Federal and local law enforcement authorities. Among other steps, the Department of State will:

(1) Continue educating and informing law enforcement authorities of the relevant principles of international law;

(2) Encourage law enforcement personnel in particular to study carefully and consult with the Department on any claim of immunity, so as not to extend immunity from prosecution or other judicial process to persons not entitled to such treatment; and

(3) Continue to distribute its publication, Guidance for Law Enforcement Officers, and continue to follow up issuance of this publication with specific, case-by-case consultation and decisions.

b. A separate, but related, matter concerns non-resident aliens who, though not entitled to immunity from criminal jurisdiction, have a status or personal situation which generates foreign relations interest. In certain cases involving such individuals, overriding foreign relations or national security interests, or humanitarian concerns, may justify communication of concerns by the Department of State. The Department's general policy in such cases, however, is to let the law take its course, just as for any other person subject to U.S. jurisdiction, and that therefore no Department action would be warranted. Department personnel are prohibited from interfering in any manner with investigations or prosecutions of such individuals without properly obtained authority at the appropriate Department level (see Sec. 2 FAM 234).

2 FAM 233.6 Civil Liability

(TL:GEN-268; 02-28-1991)

The Department of State is also concerned about any abuse of immunity from civil jurisdiction by missions, their members and members of their families. S/CPR, M/OFM, and USUN, in the case of UN personnel, are the Department offices with central responsibility for ensuring proper practices among the foreign diplomatic community in paying just debts and discharging other just civil liabilities. Of particular concern is that M/OFM continue to monitor and ensure compliance by that community with the liability insurance requirements of section 204A of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 4304a).

2 FAM 234 DEPARTMENT ACTION

2 FAM 234.1 Criminal Cases

(TL:GEN-268; 02-28-1991)

Communications or actions by the Department are generally sought by law enforcement authorities, by courts, by or on behalf of individuals, by foreign governments, or by affected private citizens in two categories of criminal cases:

(1) Those involving persons who, by virtue of accreditation to the United States or to an international organization, or as personnel of an international organization (or the members of their families), have immunity from criminal jurisdiction in the United States; and

(2) Those involving all other aliens, resident and non-resident.

2 FAM 234.1-1 Certification of Immunity

(TL:GEN-268; 02-28-1991)

a. S/CPR, and USUN for UN personnel, shall maintain records of all individuals accorded privileges, exemptions, and immunities under the law of the United States.

b. In any case which comes to the Department's attention where representatives with diplomatic immunity are alleged to have committed a criminal offense, S/CPR shall certify, formally or informally as appropriate, to law enforcement authorities, courts of the United States, or, upon request, to private counsel, whether the person concerned has immunity of any kind and the extent of that immunity. (In certain instances M/OFM also provides informal certifications.)

c. In cases involving UN personnel, USUN shall advise the appropriate authorities whether the person concerned has immunity of any kind and the extent of that immunity.

d. In each case S/CPR and USUN shall make every effort to communicate to appropriate law enforcement authorities those investigative measures which are consistent with immunity from criminal jurisdiction (see 2 FAM 233 Exhibit 233.4) and to request that the authorities keep S/CPR and USUN informed in writing of the disposition of each case.

2 FAM 234.1-2 Other Action

(TL:GEN-268; 02-28-1991)

a. Under the law of the United States, aliens are generally entitled to the same rights and subject to the same responsibilities as United States citizens where litigation, both civil and criminal, is concerned. The policy of the United States is that the law of the United States should take its course in the investigation and prosecution of all aliens, to the extent consistent with international law. S/CPR and USUN, as appropriate, may certify immunity and related information as described in Sec. 2 FAM 234 .

b. When an alien who is not entitled to immunity from arrest or prosecution is charged with a serious crime, the Department of State may wish to communicate its concerns based on policy considerations with regard to the particular treatment proposed for any aspect of the case. Whether and how to communicate such concerns may only be decided and acted upon by L after discussion with the concerned bureaus, including S/CPR, M/OFM, DS, IO, USUN, and the appropriate regional bureau, as well as the Department of Justice. Any differences between L and the concerned bureaus must be resolved by the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Political Affairs, or the Under Secretary of State for Management. The Department should be guided by such policy considerations as overriding foreign relations, national security, or humanitarian concerns (such as where the life or health of the person concerned may be in danger) in determining whether a communication of its concerns is a proper course of action.

c. It is the responsibility of S/CPR, the respective regional bureaus, and any other Department officer or employee to whom a suggestion for any communication on behalf of an alien has been made to bring the matter to the attention of L at the earliest opportunity. Because of the inherently sensitive nature of criminal prosecutions, the technical issues likely to arise, the need to coordinate with the Department of Justice, and the need for consistency, no Department officer may discuss with investigative or prosecutorial authorities the disposition of any matter involving a person without immunity without the participation of L personnel. This requirement applies at all stages of an investigation or proceeding, from pre-indictment to sentencing.

2 FAM 234.2 Civil Cases

(TL:GEN-268; 02-28-1991)

a. The several regional bureaus and the Bureau of International Organization Affairs of the Department of State are expected to bring to the attention of S/CPR, USUN, or M/OFM, as appropriate, and L in all instances, any situation which comes to their attention involving apparent failure of a member of the foreign diplomatic or consular community to meet just financial obligations. The regional bureaus and IO are further directed to provide assistance to S/CPR, USUN, and M/OFM, upon request, in resolving problem cases, in consultation and coordination with L.

b. The Department shall intervene, through S/CPR and USUN, and with the assistance of L, where the complainant notifies the Department of the matter in writing, and can produce satisfactory evidence that:

(1) A debt or civil liability is owed;

(2) The matter has been brought to the attention of the mission member concerned and to the head of the mission, without resolution; and

(3) Immunity would preclude judicial or administrative action.

c. Finally, if settlement of outstanding debts is not reached within a reasonable period (not exceeding six months), continued reliance on immunity to evade a debt will affect a mission member's continued acceptability in the United States, to the extent consistent with the international obligations of the United States. The departure of a mission member without settlement of outstanding debts will affect the Department's ability to accept a replacement, having due regard for the international obligations of the United States, and will result in the United States notifying potential creditors to the extent practicable of all appropriate facts necessary for their self protection.

2 FAM 234.3 Records and Reports

2 FAM 234.3-1 Records

(TL:GEN-268; 02-28-1991)

a. S/CPR is responsible for establishing and maintaining complete records of each case which comes to its attention where a person with immunity from criminal jurisdiction in the United States has been accused of a crime in the United States. The record shall include whatever action S/CPR or any other Department office may have taken in that case. S/CPR shall share such records with the Visa Office to help exclude persons with immunity who leave the United States in order to avoid prosecution for serious crimes.

b. S/CPR also shall establish and maintain records of all outstanding obligations by persons with immunity from U.S. civil jurisdiction which are brought to its attention.

c. M/OFM, USUN, each regional bureau, and DS shall provide S/CPR and L reports on all cases which come to their attention.

2 FAM 234.3-2 Reports

(TL:GEN-268; 02-28-1991)

a. S/CPR shall periodically analyze the records maintained under Sec. 2 FAM 234.3-1 and prepare, no less frequently than annually, a report to the Secretary of State. This report (F-91-5, Report on Criminal and Civil Cases Involving Immunity), shall list each case involving:

(1) An alien with immunity from criminal jurisdiction where there is reason to believe that the alien committed a serious offense in the United States. "Serious offense" means any:

(a) Felony;

(b) Crime of violence, as defined in 18 U.S.C. 16; or

(c) Crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of drugs when that crime involves personal injury to another person.

(2) An alien with immunity from criminal jurisdiction in which the Department of State has certified the immunity, pursuant to the procedures set forth in Sec. 2 FAM 234.1-1;

(3) Outstanding obligations of missions or aliens with immunity from U.S. civil jurisdiction, which has been pending in S/CPR without resolution for over six months. The report shall also include the disposition of the case, including, where appropriate, whether waiver of immunity was requested and received and whether an alleged criminal offender was required to leave the United States.

b. Six months after the effective date of these regulations and no less frequently than annually the Secretary of State shall transmit to the Committee on Foreign Relations of the United States Senate and to the Committee on Foreign Affairs of the House of Representatives a copy of the S/CPR report and any further measures which the Secretary of State believes to be necessary to further the program described in Sec. 2 FAM 233 .

c. At the same time, the Secretary of State shall also submit a separate report, on a confidential basis, identifying the names and the missions of those aliens involved in the cases listed in the S/CPR report.

2 FAM 235 PROTECTION OF FOREIGN DIPLOMATIC PREMISES

2 FAM 235.1 Responsibility

(TL:GEN-268; 02-28-1991)

The responsibility for coordinating all matters relating to the protection of premises and foreign officials is vested in the Bureau of Diplomatic Security's Office of Protection (Protective Liaison Division--DS/DSS/P/PL which maintains liaison with the Metropolitan Police Force and the Uniformed Division of the Secret Service.

2 FAM 235.2 Procedures

(TL:GEN-268; 02-28-1991)

a. All officers of the Department who may be contacted in regard to these matters by any diplomatic mission immediately inform the Protective Liaison Division (DS/DSS/P/PL).

b. After coordinating with S/CPR, OFM, L, and the regional bureau concerned, as necessary, DS/DSS/P/PL ensures that all necessary action on behalf of the Department of State is taken.

2 FAM 236 THROUGH 239 UNASSIGNED

2 FAM 233 Exhibit 233.4
TEXT OF 11-15-89 CIRCULAR DIPLOMATIC
NOTE TO CHIEFS OF DIPLOMATIC MISSIONS
IN THE UNITED STATES

(TL:GEN-268; 02-28-1991)

The Secretary of State presents his compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to refer to previous diplomatic notes from the Department of State on the subject of immunity from the jurisdiction of the United States.

Despite cooperative measures among the Department of State, United States law enforcement authorities, and the addressee missions, there continues to exist a relatively small, but unacceptable, number of members of the foreign diplomatic community in the United States who abuse their immunity from criminal jurisdiction under international law. The Department has taken a number of reaffirming measures, particularly since enactment of the Diplomatic Relations Act of 1978 and the Foreign Missions Act of 1982, to ensure that the activities of the foreign diplomatic community and other persons who have immunity from criminal jurisdiction by virtue of their official status as representatives of a foreign government or international organization conform with U.S. and applicable provisions of international law. Nonetheless, the Department of State, sharing the concern of the United States Congress and the public at large, has devised a strengthened, comprehensive program for enforcement of an appropriate system for regulating diplomatic immunities, in a manner that is both effective and consistent with international law.

Under international law and practice persons extended immunity from the jurisdiction of host country laws nonetheless are obligated to respect those laws. As all nations recognize, diplomatic immunity is based upon the principle that duly accredited members of diplomatic missions must be able to pursue their official duties free from harassment and possible intimidation and without impediment to their performance of those duties. However, immunity is not a license for misconduct. It is in fact a doctrine intended to benefit the functioning of the mission, not to personally benefit its individual members. Consequently, the Government of the United States in the first instance looks to chiefs of diplomatic missions, to their counterparts in missions to international organizations, and to the heads of international organizations headquartered or maintaining offices in the United States to counsel members of their staffs, as well as family members who enjoy derivative immunity, on their duty to respect the laws and regulations of this country. Ultimately, the United States will hold the Chief of Mission and the sending government responsible for the conduct of persons sent to the United States as diplomatic representatives or of others entitled to immunity. The Department also expects all missions to

consider in good faith requests made for waivers of immunity and, in addition, to take appropriate action against those who may abuse their immunity.

The Department of State reiterates that criminal violations will not be tolerated by the United States Government or the community at large. While the Department will continue to take necessary action as required by international law to safeguard and preserve the immunity of persons allegedly involved in criminal behavior, the Department wishes to communicate the corrective measures consistent with international law that are being taken in cases involving serious criminal conduct, in particular crimes of violence, recurrent offenses of a less serious nature, or other egregious abuses of immunity.

In this regard, the Department wishes to emphasize the following points:

1. The Chiefs of Mission must ensure that the members of their missions and eligible members of their families apply for and receive identity cards issued by the Department of State. Those cards contain not only the official identification of the person but also a statement of the extent of the bearer's immunity. Only persons properly notified to and accepted by the United States Government can be issued documents stating their immunity, and have their status confirmed through the Office of Protocol of the Department of State. In order to ensure that proper notification is given of termination of mission members upon departure, except for those missions subject to a bilateral ceiling restricting the number of official employees at the mission, henceforth notification of new personnel to be accredited must include either information on which person is being replaced at the mission and the date of termination of the predecessor, or a certification that the new person will occupy a new position. Until such time as a revised form reflecting these changes in the regulations is available, such information should be included at the bottom of the appropriate notification form. An example is attached.

2. A diplomatic agent possessing proper identification may not be arrested or detained. It is emphasized, however, that the United States has a duty to protect the safety and welfare of the public, including other diplomats, and to take reasonable steps to prevent the commission of crimes. United States law enforcement authorities therefore have been instructed that, in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity, even in cases involving diplomatic agents. This includes the power of the police to defend themselves and others from personal harm. At the same time, law enforcement authorities will also take any necessary action to ensure that a diplomatic agent does not bring harm to himself. Mission personnel having a lesser degree of immunity, of course, are also subject to these measures, as well as any other measures consistent with their more limited immunity.

3. Persons with immunity from criminal jurisdiction, consistent with international law, are subject to criminal investigation to the same extent as any other person residing in the United States, as may be required. Chiefs of Mission are requested to instruct members of their missions, and the family members of those members, to cooperate fully with such investigations. United States law enforcement authorities have been instructed to pursue vigorously investigations, to prepare cases carefully and completely, and to document properly each incident of alleged commission of a crime. These steps are required so that charges against alleged offenders may be pursued as far as possible in the United States judicial system consistent with their immunity. These steps are also necessary to ensure that investigative reports provide sufficient information to initiate diplomatic measures against an alleged offender. Such steps may be important also to protect foreign mission personnel alleged to have been involved in criminal misconduct, as investigation of allegations of wrongdoing will determine whether or not they are substantiated.

4. As a matter of general policy, in all cases involving allegations of criminal misconduct, the Department requests the sending government to waive immunity so that allegations of criminal or other misconduct may be adjudicated fully and resolved pursuant to U.S. law. Where a waiver of immunity is refused, the United States Government normally will require in the case of serious offenses that the alleged offender depart the country, including, where necessary, in the case of such serious offenses by family members, departure of the mission member from whom the family member's immunity derives. Even where a waiver of immunity has been granted, the Department retains discretion to require the departure of the alleged offender where necessary. For the guidance of missions, the Department considers serious offenses to include: (1) any felony, (2) any crime of violence, such as an attack with a firearm or dangerous weapon, or (3) driving under the influence of alcohol or drugs, which causes injury to persons. In addition, the Department is particularly concerned about those situations where there is a pattern of recurrent, though less serious, offenses, especially those involving drugs or driving without insurance.

5. The Department of State further, as a matter of policy, seeks to prevent the return to the United States of persons entitled to immunity who, as alleged offenders, have been required to leave this country. The Department will not accept such persons in representative capacities thereafter which would establish any degree of immunity from criminal jurisdiction in their behalf.

6. In all cases involving injury to persons or damage to property, the Department of State intends to pursue vigorously the interests of the aggrieved parties in obtaining prompt restitution by individual offenders or from their governments.

7. The Department wishes to remind the missions that in any case involving criminal activity no immunity exists against the arrest and prosecution of a person formerly entitled to privileges and immunities who returns to the United States following the termination of his or her official duties, unless it can be proved that the crime related to the exercise of official functions. That defense is adjudicated by the courts. The Department recognizes that the threat of prosecution may serve, as a practical matter, to prevent individuals who commit crimes while in privileged status from returning to the United States. To ensure that such individuals do not return without appropriate review by United States authorities, the Department reaffirms its requirement that the sending government forward the passport of the alleged offender (and of family members in appropriate cases) to the Department before he or she departs the United States so that the visa may be revoked and the form I-94 returned to the Immigration and Naturalization Service. Should the alleged offender leave the United States before the visa is canceled, the Department reserves the right to refuse a replacement for the offender (or his or her principal in the case of a crime committed by a dependent) on the mission staff, to the extent permitted under international obligations, until the outstanding visa is revoked.

8. The Department of State has measures already in place to prevent persons, for whom there is reason to believe that they have committed a serious criminal offense, from reentering the United States in a diplomatic or consular capacity after having been required to leave this country. These measures include entering data on the alleged offender in the Department's Automated Visa Lookout System. This information is shared with the Immigration and Naturalization Service and used by the INS at ports of entry into the United States. Also, as already noted, the Department requires cancellation of existing visas when a foreign diplomat leaves the United States as a result of alleged commission of a criminal offense.

9. In addition, the Department of State is seeking legislation which would add a new category of ineligibility for visas and for admission to the United States. This new provision would exclude from the United States persons for whom there is reason to believe that he or she committed a serious criminal offense in the United States, for whom immunity from criminal jurisdiction was exercised, and who left the United States as a consequence, thus preventing adjudication of guilt or innocence in United States courts.

10. The Department of State defines "member of the family" for purposes of immunity from criminal jurisdiction as a person who is in one of the following relationships to an official representative of a foreign government or another person who has immunity from criminal jurisdiction by virtue of his or her official status:

(A) the spouse of such representative or other person and his or her unmarried children under 21 years of age, who are not members of some other household, and who reside exclusively in the principal's household, if the spouse or children are not nationals (in the case of a diplomatic agent) or (in the case of other representatives) nationals or permanent residents of the United States;

(B) the unmarried children of such representative or other person who are under 23 years of age and attending an institution of higher education on a full-time basis, if they are not nationals (in the case of a diplomatic agent) or (in the case of other representatives) nationals or permanent residents of the United States; and

(C) under exceptional circumstances and with the express advance approval of the Department of State, other persons who are not members of some other household, who reside exclusively in the principal's household, and who are recognized by the sending State as members of the family forming part of the household.

The Department of State also takes this opportunity to remind the Chiefs of Mission of previous circular notes on the policies and procedures affecting their missions and staff, particularly the notes of September 21, 1987, and March 21, 1984, regarding the conduct of diplomatic agents in the United States; the notes of April 1, 1986, and May 8, 1985, regarding motor vehicle requirements; the notes of August 17, 1987, and September 9, 1985, regarding traffic fines; the note of July 3, 1985, regarding operation of motor vehicles while under the influence of drugs or alcohol; the note of July 5, 1984, regarding registration of motor vehicles; the note of March 17, 1987, regarding liability insurance; the notes of December 19, 1988, May 21, 1986, and February 3, 1983, concerning the possession and carrying of firearms; and the note of October 24, 1986, regarding identification cards and updating of such cards. (Copies of these notes are enclosed for the convenience of the missions.)

The Department of State reminds the Chiefs of Mission that, as in the case of personal immunity of individuals, the inviolability of diplomatic and consular pouches is based upon the need of missions to have free communication with their governments and missions in other countries or elsewhere in the United States. The Department will not tolerate abuses of this inviolability to bring into the United States or transport within the United States illegal substances, such as narcotics, explosives, firearms and other material illegal under United States law and regulation. The Government of the United States will take all steps consistent with international law to detect, prevent, and punish such abuse.

In conclusion, the Department of State urges the Chiefs of Mission to ensure that members of their missions, and their dependents, pay their just debts, and that all necessary and appropriate steps are taken by waiver of immunity, insurance, or otherwise to discharge obligations arising from the presence and activities of the missions, their members and dependents. The Department strongly recommends that the missions and their members obtain liability insurance, in addition to the level of motor vehicle insurance already required by the U.S. Government, to cover property losses or injury arising out of their activities.

Where the Department learns that missions or their members have failed to discharge legitimate debts within a reasonable time, or are otherwise financially liable for activities undertaken in the United States, upon request, the Department will intervene to secure payment. In particular, it is the Department's practice to assist in resolving outstanding debts of mission members where the complainant notifies the Department of the matter in writing, and can produce satisfactory evidence 1) that a debt or civil liability is owed, 2) that the matter has been brought to the attention of the mission member concerned and to the head of the mission, without resolution for an unreasonable period (pending without resolution for six months or more), and 3) that immunity would preclude judicial or administrative action. The Department must advise the Chiefs of Mission that reliance on immunity to evade a financial obligation under law could call into question a mission member's continued acceptability in the United States. In addition, the departure of a mission member without settling outstanding financial liabilities could affect the Department's willingness to accept a replacement, and could cause the United States to advise prospective creditors of the financial unreliability of the mission or its members.

The Department will closely study the manner in which the respective missions discharge this responsibility and will take those diplomatic measures which will be both effective and consistent with international law.

Enclosures:

1. Circular Notes of September 21, 1987, March 21, 1984, April 1, 1986, May 8, 1985, August 17, 1987, September 9, 1985, July 3, 1985, July 5, 1984, March 17, 1987, December 19, 1988, May 21, 1986, February 3, 1983, and October 24, 1986.

2. Examples of Notification Forms.

Department of State,
Washington, November 15, 1989.